



DEPARTMENT OF THE ARMY
UNITED STATES ARMY PHYSICAL DISABILITY AGENCY
BUILDING 7 WRAMC
WASHINGTON DC 20307-5001

AHRC-DZB

FEB 28 2005

MEMORANDUM FOR PHYSICAL EVALUATION BOARD PRESIDENTS

SUBJECT: Policy/Guidance Memorandum #16: Presumption of Fitness

1. Purpose: To clarify application of the presumption of fitness rule to length of service retirement cases affected by stop loss and to the cases of retired recalls.

2. References:

- a. DoD Instruction 1332.38, para E3.P3.5.2.1 (page 5).
- b. MILPER Message 04-169, 02 June 2004

2. Discussion:

a. Stop loss: In September 02 this Agency confirmed with Human Resources Command that stop loss resulted in the revocation of length of service retirement orders and the Soldier had to reapply. Accordingly, PEBs were advised not to apply the presumption of fitness rule to retirement cases affected by stop loss. A review of recent stop loss messages reflects that retirements are suspended rather than revoked.

b. Retired recalls: DoD Instruction 1332.38, para E3.P3.5.2.1 (page 5) does not address retired recalls. Accordingly, it does not preclude application of the rule to a recall from length of service retirement. As presented in DoD Instruction, the rule has no time limit on when the presumption period is to end. Retired Soldiers clearly have entered the presumptive period in the past and have successfully reached their goal of retirement. As the military disability system was enacted to compensate Soldiers for their early removal from their career and retirement goals, the successful retirement of a Soldier would seem to preclude any such loss.

3. Policy:

a. Stop loss retirement cases: The PEBs will apply the presumption of fitness to cases in which the stop loss MILPER message affecting the Soldier's length of service retirement suspends the retirement. If the message revokes the retirement, the presumption rule will not be applied.

b. Retired calls: The presumption of fitness rule will be applied to Soldiers who are recalled from a length of service retirement.

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4. Point of contact: Ms. Frances Dennis, Policy Officer, DSN 662-3064, and commercial (202) 782-3064.

FOR THE COMMANDER:

A handwritten signature in black ink, appearing to read "Dan L. Garvey", with a stylized flourish at the end.

DANIEL L. GARVEY

COL, AV

Deputy Commander

CR:

HQUSAPDA Senior Staff

DASG-HPS (COL Arroyo)

APDAB (COL Sutton)